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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RAY GRAHAM,

Plaintiff,

vs.

FLOWERS BAKING COMPANY OF  
HENDERSON, LLC., a Nevada corporation;  
AND DOES 1-50, inclusive,

Defendants.

**Case No.: 2:20-cv-00153**

**COMPLAINT FOR DAMAGES**

**(DEMAND FOR JURY TRIAL)**

COMES NOW, Plaintiff, Ray Graham (herein "PLAINTIFF") and files this civil action against Defendants, and each of them, for violations of the Civil Rights Act of 1964, as amended 42 U.S.C. 2000(e) et. seq., 42 U.S.C. 1981, 42 U.S.C. §12112 et seq., as well as violations under Nevada Revised Statutes §613.330 et. seq.; and related claims under Nevada law, seeking damages, and alleges as follows:

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**JURISDICTION AND VENUE**

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2 1. This Court has jurisdiction and venue over this action pursuant to Civil Rights Act  
3 of 1964, as amended 42 U.S.C. 2000(e) et. seq., 42 U.S.C. 1981 et seq., and 42 U.S.C. §12112 et  
4 seq., which confer original jurisdiction on federal district courts in suits to address the  
5 deprivation of rights, privileges and immunities secured by the United States Constitution and  
6 federal law.

7 2. Jurisdiction of this Court is also appropriate under any related claims under  
8 Nevada law.

9 3. Supplemental Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1367  
10 over the State law claims which are so related to the federal claims in this action that they form  
11 part of the same case or controversy under Article III of the United States Constitution.

12 4. Plaintiff has exhausted his administrative remedies.

13 5. All conditions precedent to jurisdiction under section 42 U.S.C. 2000(e) et. seq.,  
14 42 U.S.C. 1981, and 42 U.S.C. §12101 et seq. have occurred or been complied with:

15 a. A charge of employment discrimination was filed with the Equal  
16 Employment Opportunity Commission ("EEOC") within 180 days of the commission of the  
17 unlawful employment practice alleged herein and / or within 300 days of PLAINTIFF instituting  
18 proceedings with a State or local agency with authority to grant or seek relief from such unlawful  
19 employment practices alleged herein;

20 b. A Notice of Right to Sue in Federal Court was received from the EEOC,  
21 dated November 1, 2019. (A true and correct copy of said letter is attached and incorporated  
22 herein as Exhibit "1".)

23 6. This complaint is filed within 90 days of receipt of the EEOC's Notification of  
24 Right to Sue.

25 7. Venue is proper in the District of Nevada because the unlawful employment  
26 practices alleged herein were committed in whole or in part in the District of Nevada pursuant to  
27 28 U.S.C. § 1391(b).

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**PARTIES**

**PLAINTIFF**

8. PLAINTIFF, RAY GRAHAM, was a qualified/eligible “employee” of DEFENDANT, within the meaning of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. 2000(e), 42 U.S.C. §1981, and 42 U.S.C. §12112 et seq., and Nevada Revised Statutes §§ 608.010 and 613.010 *et seq.*; and related claims under Nevada law.

**DEFENDANTS**

9. Defendant, FLOWERS BAKING COMPANY OF NEVADA, LLC, (hereinafter “FLOWERS” or “DEFENDANT”) is a domestic limited liability company, qualified to do business in Nevada. DEFENDANT employs 15 or more employees and is an "employer" within the meaning of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. 2000(e), 42 U.S.C. §1981, and 42 U.S.C. §12112 et seq.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 50, inclusive are unknown to Plaintiff at this time, who therefore sues said Defendants by such fictitious names. PLAINTIFF is informed and believes and thereon alleges that each of the fictitiously named DEFENDANTS are in some way responsible for, or participated in, or contributed to, the matters and things complained of herein, and is legally responsible in some manner. PLAINTIFF will seek leave to amend this Complaint when the true names, capacities, participation and responsibilities have been ascertained.

**STATEMENT OF FACTS**

11. PLAINTIFF is a former employee of DEFENDANT, where he worked as a production technician and supervisor. At the time of his employment, PLAINTIFF’S pay consisted of an hourly wage of \$24.50. He was employed by DEFENDANT from approximately November 21, 2013 to approximately March 27, 2019.

12. PLAINTIFF is black/African American.

13. Throughout his employment, PLAINTIFF witnessed and experienced numerous instances of racial discrimination by his direct supervisor, Alex Irvine.

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1           14. Mr. Irvine would regularly yell and scream at PLAINTIFF and other African  
2 American employees. He did not yell and scream at non-black/African American employees.

3           15. Mr. Irvine would regularly grab papers out of PLAINTIFF'S hands and out of the  
4 hands of other African American employees and throw them in the trash. Mr. Irvine would not  
5 act similarly toward non-black/African American employees.

6           16. In April 2018, PLAINTIFF submitted a written complaint about the racial  
7 discrimination to production manager Jesse Bonner and superintendent Mike Rapive.

8           17. Neither Mr. Bonner nor Mr. Rapive responded to PLAINTIFF'S complaint.

9           18. On or about June 1, 2018, PLAINTIFF wrote a letter to Defendant's corporate  
10 headquarters in Georgia, expressing his concerns regarding racial discrimination by Alex Irvine  
11 and Jessie Bonner. PLAINTIFF indicated that he had been training for a supervisor position on  
12 the bread side of the plant for over a year and had still not been promoted. All other trainees,  
13 non-black/African Americans, had been promoted within two weeks of training.

14           19. PLAINTIFF never received a response to his written complaint to Defendant's  
15 corporate headquarters.

16           20. Following the submission of his written complaint to headquarters, Mike Rapive  
17 removed PLAINTIFF'S name from the plant work schedule. When Plaintiff addressed this issue  
18 with Mr. Rapive, Mr. Rapive stated, "Just show up. Your work hours are 7 a.m. to 3:30 p.m.". Up  
19 until this point, PLAINTIFF'S work hours had been 5 a.m. to 1:30 pm.

20           21. PLAINTIFF began working the new hours as required, but his name never  
21 reappeared on the weekly work schedule.

22           22. On or about August 1, 2018, DEFENDANT transferred PLAINTIFF from the  
23 bread side of the plant to the bun side of the plant where he worked as a lead production  
24 technician.

25           23. On or about August 17, 2018, PLAINTIFF was hospitalized for right neck abscess  
26 and sepsis. Soon thereafter, PLAINTIFF'S physician informed him that he was suffering  
27 memory loss – a side effect of sepsis.

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1           24.     Shortly after he returned to work, DEFENDANT promoted Plaintiff to supervisor  
2 of the bun side of the plant.

3           25.     PLAINTIFF'S new superintendent, LaDora Allen, informed him that the reason  
4 he was promoted to supervisor on the bun side of the plant was because management was furious  
5 that PLAINTIFF complained to corporate headquarters and wanted to show that they were not  
6 discriminating against him for his race/color.

7           26.     LaDora Allen further informed PLAINTIFF that Jessie Bonner intended to put  
8 him on an action plan when PLAINTIFF began working days. It was generally understood  
9 throughout the plant that being placed on an action plan was the first step in being demoted.

10          27.     PLAINTIFF began working the day shift on or about February 28, 2019.

11          28.     Almost immediately, Jessie Bonner and Mike Rapavie placed PLAINTIFF on an  
12 action plan.

13          29.     Neither Jessie Bonner, Mike Rapavie nor Joe Zimkus provided PLAINTIFF with  
14 any guidance in complying with his action plan, despite PLAINTIFF'S multiple requests for  
15 assistance.

16          30.     On or about March 22, 2019, PLAINTIFF informed LaDora Allen and Jessie  
17 Bonner about his memory loss and his desire to take several days off of work to address this  
18 condition with an established out-of-state physician.

19          31.     LaDora Allen granted PLAINTIFF the requested time off.

20          32.     Shortly after his return to work, PLAINTIFF heard subordinate co-workers  
21 discussing his condition, commenting about his inability to spell words, and laughing about it.

22          33.     Soon thereafter, management for DEFENDANT administered a spelling test to  
23 PLAINTIFF.

24          34.     PLAINTIFF passed the spelling test.

25          35.     Upon learning that PLAINTIFF passed the spelling test, one of Defendant's  
26 managers commented, "He did it so he will survive for now."

27          36.     On or about March 23, 2019, PLAINTIFF sent a group email to management,  
28 expressing his frustration that he had been placed on an action plan without any justification.

1 37. PLAINTIFF also noted in his March 23, 2019 correspondence that he believed he  
2 was being targeted because of his race/color.

3 38. Defendant discharged PLAINTIFF on March 27, 2019.

4 **COUNT I**

5 **RACE DISCRIMINATION**

6 **Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. 2000(e)**

7 **NV Rev. Stat. §613.330 et seq.**

8 **(Against All Defendants)**

9 39. PLAINTIFF hereby incorporates paragraphs 1 through 38 of this Complaint as  
10 though fully set forth herein.

11 40. PLAINTIFF was discriminated against by the DEFENDANT in the terms,  
12 conditions, privileges and benefits of his employment based upon his race, being an African  
13 American (“black”).

14 41. PLAINTIFF was qualified for his position.

15 42. PLAINTIFF was retaliated against after he opposed and complained about the  
16 discriminatory treatment he received because of his race of being black/African American.

17 43. PLAINTIFF suffered one or more adverse job consequences intentionally  
18 imposed by DEFENDANT including, but not limited to, termination.

19 44. One or more of Plaintiff’s co-workers who were not of PLAINTIFF’S race were  
20 treated more favorably in the terms and conditions of their employment than PLAINTIFF was  
21 treated.

22 45. DEFENDANT’S discriminatory and retaliatory treatment of Plaintiff in his  
23 employment was in violation of Title VII of the Civil Rights Act of 1964.

24 46. The actions of DEFENDANT were intentional and willful, in deliberate disregard  
25 of and with reckless indifference to the rights and sensibilities of PLAINTIFF.

26 47. As a direct and proximate result of DEFENDANT’S violation of PLAINTIFF’S  
27 rights as alleged, PLAINTIFF’S terms, conditions, and privileges of employment were adversely  
28 affected.



56. As a direct and proximate result of DEFENDANT'S wrongful acts and omissions, PLAINTIFF has sustained injuries and damages including but not limited to, loss of earnings and earning capacity; loss of career opportunities; loss of fringe benefits; mental anguish, physical and emotional distress; humiliation and embarrassment; loss of the ordinary pleasures of everyday life, including the right to pursue the gainful employment of his choice.

57. PLAINTIFF requests relief as described in the Prayer for Relief below.

**COUNT III**

**RACE DISCRIMINATION**

**42 U.S.C. §1981**

**NV Rev. Stat. §613.330 et seq.**

**(Against All Defendants)**

58. PLAINTIFF hereby incorporates paragraphs 1 through 57 of this Complaint as though fully set forth herein.

59. DEFENDANT has violated the Civil Rights Act of 1866, as amended, through the actions of its managers and officials in failing to provide equal opportunity to black/African American employees as it does to its Caucasian employees and by actively working to discharge black/African American employees from employment.

60. DEFENDANT intentionally retaliated against PLAINTIFF for his opposing its discriminatory and illegal conduct under the Act and for demanding equal treatment in his relations with Defendant as described herein.

61. The actions of DEFENDANT were intentional and willful, in deliberate disregard of and with reckless indifference to the rights and sensibilities of PLAINTIFF.

62. As a direct and proximate result of DEFENDANT'S violation of PLAINTIFF'S rights as alleged, PLAINTIFF'S terms, conditions, and privileges of employment were adversely affected.

63. As a direct and proximate result of DEFENDANT'S wrongful acts and omissions, PLAINTIFF has sustained injuries and damages including but not limited to, loss of earnings and earning capacity; loss of career opportunities; loss of fringe benefits; mental anguish, physical



1 and emotional distress; humiliation and embarrassment; loss of the ordinary pleasures of  
2 everyday life, including the right to pursue the gainful employment of her choice.

3 64. PLAINTIFF requests relief as described in the Prayer for Relief below.

4 **COUNT IV**

5 **RETALIATION**

6 **42 U.S.C. §1981**

7 **NV Rev. Stat. §613.330 et seq.**

8 **(Against All Defendants)**

9 65. PLAINTIFF hereby incorporates paragraphs 1 through 64 of this Complaint as  
10 though fully set forth herein.

11 66. PLAINTIFF was retaliated against after he engaged in protected activity of  
12 opposing and complaining about the discriminatory treatment he received in DEFENDANT'S  
13 workplace as fully described herein.

14 67. PLAINTIFF suffered one or more adverse job consequences intentionally  
15 imposed by DEFENDANT including, but not limited to, discharge from employment. This  
16 consequence was of the type that would tend to discourage similarly situated employees from  
17 complaining about or opposing illegal discrimination.

18 68. A causal link exists between the protected activity and the adverse action as fully  
19 described herein.

20 69. PLAINTIFF was retaliated against by Defendant willfully, embarrassingly, and  
21 harassingly because he had opposed the Defendant's practices and actions made illegal under 42  
22 U.S.C. §1981 as fully described herein.

23 70. DEFENDANT'S discriminatory and retaliatory treatment of the PLAINTIFF in  
24 his employment was in violation of 42 U.S.C. §1981.

25 71. The actions of DEFENDANT were intentional and willful, in deliberate disregard  
26 of and with reckless indifference to the rights and sensibilities of PLAINTIFF.

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72. As a direct and proximate result of DEFENDANT'S violation of PLAINTIFF'S rights as alleged, PLAINTIFF'S terms, conditions, and privileges of employment were adversely affected.

73. As a direct and proximate result of DEFENDANT'S wrongful acts and omissions, PLAINTIFF has sustained injuries and damages including but not limited to, loss of earnings and earning capacity; loss of career opportunities; loss of fringe benefits; mental anguish, physical and emotional distress; humiliation and embarrassment; loss of the ordinary pleasures of everyday life, including the right to pursue the gainful employment of her choice.

74. PLAINTIFF requests relief as described in the Prayer for Relief below.

**COUNT V**

**INTERFERENCE AND DISCRIMINATION WITH AMERICANS WITH  
DISABILITIES ACT**

**Americans with Disabilities Act (42 U.S.C. §12101 et seq.)**

**(Against All Defendants)**

75. PLAINTIFF hereby incorporates paragraphs 1 through 74 of this Complaint as though fully set forth herein.

76. At all times material hereto, PLAINTIFF was an employee covered by and within the meaning of Title I of the Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. §12112 et seq.

77. At all times material hereto, PLAINTIFF was and is an individual with a disability within the meaning of §3(2) of the ADA, 42 USC 12102(2).

78. PLAINTIFF is a qualified individual with a disability as that term is defined in the ADA, 42 USC 12111(8).

79. Memory loss is a mental disability that substantially limits one or more major life activities.

80. PLAINTIFF was able to perform his job duties without any accommodation.

81. DEFENDANT was aware of PLAINTIFF'S memory loss.

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1 82. PLAINTIFF'S disability, and/or record of a disability, and/or perceived disability was  
2 a factor that made a difference in DEFENDANT'S decision to terminate him.

3 83. PLAINTIFF'S disability was a factor that made a difference in DEFENDANT'S  
4 decision refuse to answer his questions or assist him.

5 84. The actions of DEFENDANT were intentional and willful, in deliberate disregard of  
6 and with reckless indifference to the rights and sensibilities of PLAINTIFF.

7 85. As a direct and proximate result of DEFENDANT'S violation of PLAINTIFF'S  
8 rights as alleged, PLAINTIFF'S terms, conditions, and privileges of employment were adversely  
9 affected.

10 86. As a direct and proximate result of DEFENDANT'S wrongful acts and omissions,  
11 PLAINTIFF has sustained injuries and damages including but not limited to, loss of earnings and  
12 earning capacity; loss of career opportunities; loss of fringe benefits; mental anguish, physical  
13 and emotional distress; humiliation and embarrassment; loss of the ordinary pleasures of  
14 everyday life, including the right to pursue the gainful employment of his choice.

15 87. PLAINTIFF requests relief as described in the Prayer for Relief below.

16 **COUNT VI**

17 **HOSTILE WORK ENVIRONMENT**

18 **Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e *et seq.*)**

19 **Title VII - Civil Rights Act of 1991 (42 U.S.C. §1981 *et seq.*)**

20 **NV Rev. Stat. §613.330 *et seq.***

21 **(Against All Defendants)**

22 88. PLAINTIFF hereby incorporates paragraphs 1 through 87 of this Complaint as  
23 though fully set forth herein.

24 89. PLAINTIFF was subjected to yelling/shouting from his supervisors, a refusal by his  
25 supervisors to assist him with his action plan, as required, company-wide sharing of his  
26 confidential health information, and subjection to a spelling test during his employment with  
27 DEFENDANT, which was perpetrated upon him by DEFENDANT, and that this conduct was  
28 based upon and directed at PLAINTIFF by reason of his race and/or disability.

1 90. The conduct was unwelcome.

2 91. The conduct was sufficiently severe or pervasive to alter the conditions of  
3 PLAINTIFF'S employment and create an abusive and/or hostile work environment;

4 92. This harassing and discriminatory conduct was sufficiently severe and pervasive so as  
5 to unreasonably interfere with PLAINTIFF'S physical health, work performance and so as to  
6 create an intimidating, hostile and offensive working environment.

7 93. Plaintiff perceived the working environment to be abusive or hostile.

8 94. During the times referenced herein, PLAINTIFF discovered that confidential health  
9 information regarding his memory loss, which he provided in confidence to his supervisor, was  
10 shared throughout the work site. PLAINTIFF overheard his co-workers laughing about his  
11 medical condition. PLAINTIFF'S managers subjected him to a spelling test and expressed  
12 surprise when he passed.

13 95. PLAINTIFF and another black employee were the only individuals placed on an  
14 action plan during 2018-2019.

15 96. DEFENDANT'S placement of PLAINTIFF on an action plan was a pre-textual  
16 reason for DEFENDANT to discharge PLAINTIFF.

17 97. PLAINTIFF was the only employee DEFENDANT ever subjected to a spelling test.

18 98. DEFENDANT would render assistance to white employees, but would ignore  
19 PLAINTIFF'S request for assistance.

20 99. As a direct and proximate result of the harassing and hostile environment of  
21 DEFENDANTS and his supervisors, PLAINTIFF suffered great embarrassment, humiliation and  
22 mental and physical anguish.

23 100. DEFENDANT'S unlawful actions were intentional, willful, malicious and/or done  
24 with reckless disregard for PLAINTIFF'S federally protected rights.

25 101. DEFENDANTS through its agents or supervisors failed to adequately supervise,  
26 control, discipline, and/or otherwise penalize the conduct, acts, and failures to act of  
27 DEFENDANTS described above thereby ratifying the unlawful conduct of its agents or  
28 supervisors.

102. As a direct and proximate result of DEFENDANT'S wrongful conduct, PLAINTIFF has suffered damages including, but not limited to, a loss of income and benefits, and has further suffered emotional distress and other general damages.

103. In doing the things alleged herein, DEFENDANT'S conduct was despicable, and DEFENDANT acted toward PLAINTIFF with malice, oppression, fraud, and with willful and conscious disregard of PLAINTIFF'S rights, entitling PLAINTIFF to an award of punitive damages.

104. DEFENDANT'S conduct described herein was engaged in by managing agents for DEFENDANT and/or ratified by managing agents.

**PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF prays that this Court grant the following relief:

1. Economic Loss for Back Pay and Front Pay, plus prejudgment interest;
2. Compensatory Damages in accordance with 42 U.S.C. §2000e, 42 U.S.C. §1981a, 42 U.S.C. §12117, and other applicable statutes;
3. Reasonable attorneys' fees pursuant to 42 U.S.C. §12205 and other applicable statutes;
4. Punitive Damages in accordance with 42 U.S.C. §2000e, 42 U.S.C. §1981a, 42 U.S.C. §12117, and other applicable statutes;
5. Costs of suit incurred herein; and
6. Such other and further relief as the court deems just and proper.

DATED this 22nd day of January, 2020. WATKINS & LETOFSKY, LLP

*/s/ Daniel R. Watkins*

By: \_\_\_\_\_

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Las Vegas, NV 89123  
Attorneys for Plaintiff, Ray Graham

**REQUEST FOR JURY TRIAL**

Pursuant to Federal Rules of Civil Procedure 38(b) and 42 U.S.C. §1981a, PLAINTIFF demands a trial by jury in this action on all issues so triable.

DATED this 22nd day of January, 2020.      WATKINS & LETOFSKY, LLP

*/s/ Daniel R. Watkins*

By: \_\_\_\_\_

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